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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	MM Docket No. 92-266
Leased Commercial Access	CS Docket No. 96-60

COMMENTS

Shop at Home, Inc. ("Shop At Home") hereby files these comments in response to the *Further Notice of Proposed Rulemaking ("NPRM")* in the above-referenced proceeding. Shop at Home is a rapidly growing, but still relatively small home shopping service, in continuous operation for 10 years. It has no ownership ties to the cable industry. In the past several years, Shop at Home has actively pursued carriage agreements with the nation's cable operators. It now has distribution to approximately 15 million cable households via broadcasting and direct to cable and is continuing to enter into new carriage agreements with major cable MSOs. It also has part time carriage on several leased access channels, from various systems and MSO's.

Shop at Home anticipates scores of cable operators and cable programmers filing comments in this proceeding explaining how the dramatically reduced leased access rates proposed in the *NPRM* would effectively subsidize shopping networks and lead to their proliferation. Although Shop at Home might benefit from reduced leased access rates, it strongly opposes the change proposed in the *NPRM*. The proposed rate change is inconsistent with both the statutory mandate and the public interest. It threatens to disrupt and distort the programming marketplace for no discernible public benefit.

The Commission's interest in reducing existing leased access rates stems, in part, from the relatively limited amount of leased access activity that has occurred to date.[1] But the Commission's statutory authority to establish maximum leased access rates does not mean that the Commission is empowered to ensure the success of the leased access option. To the contrary, there is no statutory requirement (or expectation) that cable systems fill their leased access quota. *See* 47 U.S.C. § 532(b)(4)(allowing cable operator to use any unused leased access channel capacity). More importantly, the statute makes clear that the cable operators must make leased access channels available, but need not subsidize their use. Section 612 expressly provides that leased access rates are not to "adversely affect the operation, financial condition, or market development of cable systems." 47 U.S.C. § 532(c)(1).

The legislative history of Section 612 reflects a recognition that the fundamental economics underlying commercial leased access may be unworkable. *See NRPM* at ¶ 26 (citing S. Rep. No. 92, 102d Cong., 1st Sess. (1991) at 31-32) ("The cable industry has a sound argument in claiming that the economics of leased access are not conducive to its use"). If there is an inherent problem with the conflicting objectives of underlying commercial leased access, the responsibility lies with Congress. The Commission cannot "fix" the problem by ignoring Congress' unequivocal mandate that operators are not to subsidize leased access users.

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[1]Although the Commission acknowledges that "minimal use of leased access channels would not indicate that the rate should be lowered," *NPRM* at ¶ 24, *the NPRM* repeatedly suggests that rate should be lowered to fulfill the statutory objective of "promot[ing] competition and diversity of programming sources." *Id.* at ¶ 25.

The *NPRM* expresses concern that the existing leased access rate formula overcompensates cable operators by "double counting" certain costs. *NPRM* at ¶ 7. In particular, leased access applicants currently are required to pay a sum equal to the per channel charge assessed each subscriber, yet the operator still collects that charge from the subscriber. The "double counting" concern assumes that existing and potential cable subscribers are indifferent to the programming offered on their local cable system. This assumption is wrong. The cable industry spends several billion dollars each year based on the heretofore unchallenged fact that cable subscribers depend largely upon the programming cable operators make available. While it may be difficult to precisely quantify the relationship between programming and subscribership, the relationship is obviously a critical one, and the Commission cannot summarily dismiss it as "speculative."

Shop at Home believes that shopping services provide a valuable component of cable service and believes that there is room for additional shopping services, particularly as cable channel capacity expands. But Shop at Home also understands and respects the realities of the marketplace. It appreciates that cable operators must be concerned about the mix and quality of services they offer to maximize customer satisfaction. It appreciates that replacing high quality programming with low quality programming, or introducing an excessive number of channels devoted to direct sales (*i.e.*, home shopping and infomercials), would have adverse business consequences, particularly in the increasingly competitive video marketplace.

Shop at Home fears that if the Commission ignores the true value of cable channels and sets the maximum leased access rate too low, there will be an excessive expansion in the number of cable channels devoted to direct sales. This result will arise because commercial leased access is unlikely to attract high quality entertainment programming, even if the maximum leased access rate were substantially reduced. High quality entertainment programmers typically need affiliation fees from cable operators (in addition to their own advertising fees) to finance their very high production costs. Accordingly, reducing the leased access rate is unlikely to encourage the "diversity" in programming for which Section 612 was purportedly created.

The history of the "direct sales" industry on broadcast and cable is such that over 97% of the literally hundreds of channels launched since its 1986 inception have failed to survive longer than five years, seriously undermining the credibility of legitimate operators such as Shop At Home and its better known competitors QVC, and Home Shopping Network, and costing consumers many millions of dollars due to the delivery of poor merchandise and lack of long term support for returns and credits, and the attendant negative "rub off" effect on the cable delivery systems and MSO's

Since direct sales networks have a very different economic structure than entertainment networks and typically can afford to pay for cable carriage they are, therefore, likely to be the primary beneficiaries of a reduction in leased access rates. In the open marketplace, there is a natural restraint on the number of direct sales channels a particular cable system will offer. The operator will balance the revenues it can extract from direct sales programming against the revenues it can extract from devoting the channel to alternative entertainment programming. If the maximum leased access rate is set artificially low by government fiat, the resulting subsidy will inevitably produce an artificial expansion in the number of channels devoted to direct sales and create dozens (or likely far more) of undercapitalized and mismanaged electronic retailers further eroding the legitimacy and credibility of legitimate operators and cable systems.

Although this expanded carriage might initially benefit this commenter, Shop at Home is concerned that the Commission's proposal ultimately would have negative ramifications for the entire home shopping industry. The proposed rate formula would artificially distort the marketplace - with the entertainment channels subsidizing direct sales channels. At that point, too many direct sales channels would be chasing too few consumer dollars. Cable customers likely would become frustrated with the resulting product and attempt to minimize their exposure to direct sales channels -- perhaps by "surfing" over all direct sales channels on their cable system and perhaps by switching to alternative program distributors that do not face the same leased access obligations. That result would be unfair to cable operators and inconsistent with Congress' instruction that leased access rates were not to adversely affect the financial condition of cable systems. Finally, the result would be unfair to programmers, like Shop at Home, who have attempted and succeeded in gaining and maintaining cable carriage by offering a high quality, reliable service and negotiating with cable operators in the open marketplace.

CONCLUSION

For the foregoing reasons, Shop at Home urges the Commission to reject the leased access rate formula proposed in the *NPRM* and to maintain a formula that recognizes the true value of each cable channel. Shop at Home urges the Commission to display similar caution with regard to other leased access regulations, particularly regarding that part-time carriage. The amount of part-time carriage has been restricted historically in the cable industry for sound business reasons, tied to customer satisfaction and the need of programmers to guarantee advertisers consistent distribution.

Shop at Home appreciates the Commission's interest in facilitating access to cable systems by unaffiliated programmers, but urges the Commission not to create a regulatory scheme that frustrates the diversity objectives underlying Section 612.

Respectfully submitted,

By: ______________________

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Dated: May 15, 1996